

REMARKS

Claims 7-8, 13-15, 17, 21 and 25-27 are being cancelled to save fees and without prejudice to filing in a later application. Claims 34-42 are being added. Claims 1, 2, 4, 9, 10, 11, 12 and 16 are being amended. Upon entry of the amendment claims 1-6, 9-12, 16 and 34-42 will be pending in this application. The amendment and new claims add no new matter.

The amendment to claim 1 is supported by, for example, figures 1 and 8 and page 1, lines 12-19.

The amendment to claims 2 and 3 is supported by, for example, figure 5A.

The amendment to claim 4 is supported by, for example, page 9, line 13 to page 10, line 27.

The amendment to claims 9 and 10 is supported by, for example, originally filed claim 7.

The amendment to claims 11 and 12 is supported by, for example, page 13, lines 6-10.

The amendment to claim 16 is supported by that claim.

New claim 34 is supported by, for example, figure 6A.

New claim 35 is supported by, for example, figures 1-3, 6A, page 1, lines 12-19 and originally filed claim 1.

New claim 36 is supported by, for example, figure 6B.

New claim 37 is supported by, for example, page 9, line 13 to page 10, line 27.

New claims 38 and 39 are supported by, for example, figures 6B, 7 and 8.

New claim 40 is supported by, for example, page 7, lines 4-11.

New claim 41 is supported by, for example, figure 6B.

New claim 42 is supported by, for example, figures 1-3, 6A, 6B, 7 and 8; page 1, lines 12-19; page 7, lines 4-11; page 13, lines 6-10; and originally filed claim 1.

1. Restriction/Election Affirmation

During a telephone conversation with Applicants' attorney, Applicants elected with traverse to prosecute the invention of Group I, which are claims 1-15, set forth in page 2 of the Action.

Applicants hereby affirm the election of Group I, including claims 1-15. New claims 34-42 read on Group I.

2. Drawings

The drawings were objected to for the reasons given in point 4. Applicants hereby submit ten (10) sheets of Replacement Drawings (FIGS. 1-11B) to replace the existing drawings on file. This objection is moot.

3. Applicants' response to the rejection of claims 1-15 under 35 U.S.C. §112, second paragraph.

Claims 1-15 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for the reasons given in point 7. Applicants have amended claim 1 to clarify antecedent basis for the second position. This rejection is moot.

4. Applicants' response to the rejection of claims 1, 6-9 and 12-15 under 35 U.S.C. §102(b).

Claims 1, 6-9 and 12-15 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 1,956,642 to Einson for the reasons given in points 9-13.

Unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102. Net Moneyin, Inc. v. Verisign, Inc., 545 F.3d 1359; 88 U.S.P.Q.2D (BNA) 1751 (Fed. Cir. 2008). Anticipation requires that each element and interrelationship recited in a claim be disclosed explicitly

or inherently in a single piece of prior art.

Amended claim 1 recites in one pertinent part: "... a closure selectively pivotable between an open position wherein the object or material can be placed through the mouth into the housing and a closed position wherein the closure is engaged with the mouth of the container body to seal the housing from air or moisture in the environment outside of the housing ..."

Einson is directed to a paper or cardboard display. This display (housing) has numerous cutouts therein. Einson does not teach a closure that can be engaged with a container body to form a seal. Einson does not teach or suggest a housing which can be sealed from air or moisture in the environment outside of the housing. Claims 1, 6-9 and 12-15 are patentable over Einson for at least this reason.

5. Applicants' response to the rejection of claims 2-5 under 35 U.S.C. §102(b).

Claims 2-5 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 1,956,642 to Einson for the reasons given in point 15.

Claims 2-5 depend from claim 1. As discussed above Einson does not teach or suggest a housing which can be sealed from air or moisture in the environment outside of the housing. Claims 2-5 are patentable over Einson for at least this reason.

6. Applicants' response to the rejection of claims 2-5 under 35 U.S.C. §103(a).

Claims 2-5 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Einson in view of U.S. Patent No. 5,971,261 to Grunfeld et al. for the reasons given in points 16-17.

A prior art reference or combined references must teach or suggest all of the limitations of a claim to be prior art under §103. In re Wilson, 165 USPQ 494, 496 (C.C.P.A. 1970). When even one claim limitation is not found in the combination of prior art, a rejection under 35 U.S.C. §103 is improper. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

As discussed above Einson does not teach a closure that can be engaged

with a container body to form a seal. Einson does not teach or suggest a housing which can be sealed from air or moisture in the environment outside of the housing. This feature is also not taught or suggested by Grunfeld. Claims 2-5 are patentable over Einson and Grunfeld, singly or in combination, for at least this reason.

7. Applicants' response to the rejection of claims 10-11 under 35 U.S.C. §103(a).

Claims 10 and 11 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Einson in view of U.S. Patent No. 5,344,004 to Meyer for the reasons given in points 19-22.

As discussed above Einson does not teach a closure that can be engaged with a container body to form a seal. Einson does not teach or suggest a housing which can be sealed from air or moisture in the environment outside of the housing. This feature is also not taught or suggested by Meyer. Claims 10 and 11 are patentable over Einson and Meyer, singly or in combination, for at least this reason.

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Appl. No.: 10/599,688

Response to Office Action dated: March 13, 2009

Attorney Docket: ICC-303A/PCT/US

In summary, Applicants have addressed each of the objections and rejections in the present Office Action. It is believed the application now stands in condition for allowance, and prompt favorable action thereon is respectfully solicited.

The Examiner is invited to contact Applicants' attorney if a conversation will hasten prosecution of this application. Applicants' undersigned attorney may be reached by telephone at (860) 571-2501, by facsimile at (860) 571-5028 or by email at james.piotrowski@us.henkel.com. All postal correspondence should be directed to the address given below.

Respectfully submitted,

Peter Rushe et al.

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